

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.5(6) and 481A.151, the Natural Resource Commission hereby amends Chapter 113, “Restitution for Pollution Causing Injury to Wild Animals,” Iowa Administrative Code.

These amendments redefine the meaning of “AFS,” the acronym used for the American Fisheries Society’s special publications on fish counting methods and restitution valuation. The amendments update the rule to state that “Special Publication 30,” the current AFS publication regarding fish and freshwater mussel counting methods and restitution valuation, shall be used by the Department. Iowa Code section 455B.151 authorizes the Department to use the AFS to conduct fish kill counts and assess restitution for damages to the state’s natural resources and wildlife. The amendments revise the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8107B**. No written comments were received, and no one attended the October 6, 2009, public hearing. There have been no changes to the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 456A.23, 481A.2, and 481A.151. These amendments shall become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **571—113.2(481A)**, definition of “AFS,” as follows:

“AFS” means the Special Publication 24, ~~“Investigation and Valuation of Fish Kills,”~~ 30, “Investigation and Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

ITEM 2. Amend rule 571—113.3(481A) as follows:

571—113.3(481A) Liability to the state. Persons who cause by water pollution the destruction of or injury to wild animals of the state shall be liable to the state as provided by ~~2002 Iowa Acts, Senate File 2293, section 58 in Iowa Code section 481A.151.~~ These rules establish the methodologies and criteria for evaluating the extent and value of the destruction or injury and establish the methods of compensation. If the person and the department cannot agree to the proper resolution of a particular case, the issues of liability, damage and compensation will be established through contested case proceedings, as provided by 571—Chapter 7.

ITEM 3. Amend paragraph **113.4(2)“c”** as follows:

c. The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except ~~those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger)~~ the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

[Filed 12/17/09, effective 2/17/10]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.